

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

GREAT WEST CASUALTY COMPANY,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	CIVIL ACTION NO. 12-00623-KD-N
	:	
FIRSTFLEET, INC., EARL FERGERSON,	:	Judge Kristi DuBose
RBX, INC., d/b/a RBX TRANSPORTATION,	:	Magistrate Judge Katherine P. Nelson
INC.; TENNESSEE AMERICAN	:	
RECYCLING, LLC,	:	
	:	
Defendants.	:	

**PLAINTIFF’S MEMORANDUM OF LAW IN SUPPORT OF ITS
MOTION FOR SUMMARY**

Plaintiff GREAT WEST CASUALTY COMPANY (“GWCC”), by and through its attorneys of record, respectfully requests that this Honorable Court enter Summary Judgment as to Count I pursuant to Rule 56 of the Federal Rules of Civil Procedure in its favor. In support hereof, Plaintiff states:

UNDISPUTED FACTS

This coverage dispute arises out of *Ferguson v. Tennessee American Recycling, LLC, et al.*, Case No CV02011026, previously pending in the Circuit Court of Wilcox County, Alabama and now pending on appeal following summary judgment for defendants, International Paper Company, FirstFleet, Inc.(“FirstFleet”) and RBX, Inc. (“RBX”) (“underlying action”). The underlying action involved injuries to plaintiff Earl Ferguson received in his work as a truck driver. FirstFleet tendered its defense to GWCC. GWCC then brought the Complaint for Declaratory Judgment seeking a declaration that FirstFleet was not a GWCC insured. Subsequent to the filing of this suit, FirstFleet signed the attached Stipulation that it is not a GWCC insured. (Doc. 79-1, attached as **Exhibit A**).

CONCLUSIONS OF LAW

Summary judgment shall be granted where, as here “there is no issue as to any material fact and the moving party is entitled to judgment as a matter of law.” Fed.R.Civ.P. 56(c). The party seeking summary judgment bears “the initial burden to show the district court, by reference to the materials on file, that there are no genuine issues of material fact that should be decided at trial.” *Clark v. Costs & Clark, Inc.*, 929 F.2d 604, 608 (11th Cir. 1991). Here, there are no genuine issues of material fact that would preclude summary judgment in favor of GWCC. As FirstFleet has stipulated that it is not an insured, GWCC has no obligation to provide coverage for the underlying action. As a matter of law, there is no coverage under the Commercial Auto Part for FirstFleet, and GWCC has no duty to defend or indemnify FirstFleet with respect to the underlying action. As such, GWCC is entitled to summary judgment in its favor that FirstFleet is not an insured under the Policy.

WHEREFORE, for the foregoing reasons, GREAT WEST CASUALTY COMPANY, respectfully requests that this Court grant summary judgment in its favor as to Count I.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that as of the date above, a copy of the foregoing was sent via PACER electronic filing system on February 28, 2014 to:

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